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4 RANDI QUINTELL,
5 Plaintiff,
6 v.
7 DANIEL TOMKO,
8 Defendant.

9 Case No. 22-cv-09158-JCS
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13 **ORDER TO SHOW CAUSE RE
DISMISSAL UNDER 28 U.S.C. § 1915
[CORRECTED]¹**

14 **I. INTRODUCTION**

15 Plaintiff Randi Quintell, pro se, applied to proceed in forma pauperis and the Court granted
16 her application. *See* Docket No. 4. The Court now reviews the sufficiency of Plaintiff's
17 complaint to determine whether it satisfies 28 U.S.C. § 1915(e)(2)(B). Because the complaint
18 does not allege facts establishing federal jurisdiction or plausibly state a claim, Plaintiff is
19 ORDERED TO SHOW CAUSE why the complaint should not be dismissed. Plaintiff may file
20 either an amended complaint or a response to this order addressing the basis for federal
21 jurisdiction and why her complaint is sufficient, no later than **February 8, 2023**. The Case
22 Management Conference set for March 31, 2023 is vacated.

23 **II. THE COMPLAINT²**

24 Plaintiff has filed a form complaint against Defendant Daniel Temko, listing two addresses

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26 ¹ This Order to Show Cause is identical to Dkt. 5 except for the correction of the date for Plaintiff
27 to respond in the Introduction, which erroneously stated that Plaintiff's response was due on
February 8, 2022 instead of February 8, 2023.

28 ² Because the factual allegations of a plaintiff's complaint are generally taken as true in the context
of determining whether the complaint states a claim, this section summarizes Plaintiff's
allegations as if true. Nothing in this order should be construed as resolving any issue of fact that
might be disputed at a later stage of the case

1 for Defendant – one in Oakland, California and another in San Leandro, California. She also
2 describes Defendant as a citizen of “California/Pennsylvania” and “All foreign/galactic.” She has
3 checked the box for “federal question” jurisdiction. In the Statement of Claim section, she has
4 written: “● See Attachments ● All Entiritys [sic] ● Before Any others pass away without giving
5 me my propertys [sic] and assets as 9 others have left.” The attachments are a series of
6 documents, including what appear to be statements and communications by Plaintiff, relating to
7 claims that Plaintiff’s property and belongings have been stolen. Although there is no clear
8 statement of facts, the attachments suggest that Plaintiff’s claims relate to a dispute involving the
9 inheritance of a home in San Leandro, California and Plaintiff’s alleged ownership of the home
10 and the personal property in it.

11 III. ANALYSIS

12 A. Legal Standards Under 28 U.S.C. § 1915 and Rule 12(b)(6)

13 Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted leave
14 to proceed in forma pauperis, courts must engage in screening and dismiss any claims which:
15 (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek
16 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see*
17 *Marks v. Solcum*, 98 F.3d 494, 495 (9th Cir. 1996).

18 To state a claim for relief, a plaintiff must make “a short and plain statement of the claim
19 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Further, a claim may be
20 dismissed for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6);
21 *see also Diaz v. Int’l Longshore and Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir.
22 2007). In determining whether a plaintiff fails to state a claim, the court takes “all allegations of
23 material fact in the complaint as true and construe[s] them in the light most favorable to the non-
24 moving party.” *Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972, 975
25 (9th Cir. 2007). However, “the tenet that a court must accept a complaint’s allegations as true is
26 inapplicable to legal conclusions [and] mere conclusory statements,” *Ashcroft v. Iqbal*, 556 U.S.
27 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), and courts “do not
28 necessarily assume the truth of legal conclusions merely because they are cast in the form of

1 factual allegations.” *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1034 (9th Cir. 2010) (internal
2 quotation marks omitted). The complaint need not contain “detailed factual allegations,” but must
3 allege facts sufficient to “state a claim to relief that is plausible on its face.” *Id.* at 678 (citing
4 *Twombly*, 550 U.S. at 570).

5 Where the complaint has been filed by a pro se plaintiff, courts must “construe the
6 pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d
7 338, 342 (9th Cir. 2010). “A pro se litigant must be given leave to amend his or her complaint
8 unless it is absolutely clear that the deficiencies in the complaint could not be cured by
9 amendment.” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds
10 by statute, as recognized in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc). Further,
11 when it dismisses the complaint of a pro se litigant with leave to amend, “the district court must
12 provide the litigant with notice of the deficiencies in his complaint in order to ensure that the
13 litigant uses the opportunity to amend effectively.” *Id.* (quoting *Ferdik v. Bonzelet*, 963 F.2d
14 1258, 1261 (9th Cir. 1992)). “Without the benefit of a statement of deficiencies, the pro se litigant
15 will likely repeat previous errors.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 624 (9th
16 Cir. 1988) (quoting *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)).

17 **B. Discussion**

18 As a preliminary matter, the Court must address whether there is federal jurisdiction over
19 Plaintiff’s complaint. *See B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999).
20 Federal courts have limited subject matter jurisdiction and may only hear cases falling within their
21 jurisdiction. The two most common forms of federal subject matter jurisdiction are federal
22 question jurisdiction under 28 U.S.C. § 1331 and diversity jurisdiction under 28 U.S.C. § 1332.
23 Diversity jurisdiction exists where all plaintiffs are citizens of different states from all defendants
24 and at least \$75,000 is in controversy. Here, Plaintiff alleges that there is federal question
25 jurisdiction, but she has not cited any violation of a federal statute or of the United States
26 Constitution in her Complaint. It also does not appear that Plaintiff can establish diversity
27 jurisdiction as both Plaintiff and Defendant appear to reside in California.

28 Further, Plaintiff has not provided “a short and plain statement of the claim showing that

1 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). As a result, the Court cannot determine
2 whether she has a plausible claim against Defendant under Rule 12(b)(6).

3 **IV. CONCLUSION**

4 For the reasons discussed above, Plaintiff is ORDERED TO SHOW CAUSE why this case
5 should not be dismissed on the basis that there is no federal jurisdiction and/or that she has failed
6 to state a claim. Plaintiff may respond by filing either an amended complaint that addresses the
7 deficiencies discussed above or a response that addresses why her current complaint is sufficient.
8 Plaintiff’s response shall be filed by **February 8, 2023**. If Plaintiff does not file a response by
9 that date, the case will be reassigned to a United States district judge with a recommendation that
10 it be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

11 Any amended complaint must include the caption and civil case number used in this order
12 (22-cv-9158) and the words FIRST AMENDED COMPLAINT on the first page. Because an
13 amended complaint completely replaces the previous complaint, any amended complaint may not
14 incorporate claims or allegations of Plaintiff’s original complaint by reference, but instead must
15 include all of the facts and claims Plaintiff wishes to present and all of the defendants he wishes to
16 sue.

17 Plaintiff, who is not represented by counsel, is encouraged to consult with the Federal Pro
18 Bono Project’s Legal Help Center in either of the Oakland or San Francisco federal courthouses
19 for assistance. The San Francisco Legal Help Center office is located in Room 2796 on the 15th
20 floor at 450 Golden Gate Avenue, San Francisco, CA 94102. The Oakland office is located in
21 Room 470 S on the 4th floor at 1301 Clay Street, Oakland, CA 94612. Appointments can be made
22 by calling (415) 782-8982 or emailing federalprobonoproject@sfbar.org. Lawyers at the Legal
23 Help Center can provide basic assistance to parties representing themselves but cannot provide
24 legal representation.

25 **IT IS SO ORDERED.**

26 Dated: January 4, 2023

27 JOSEPH C. SPERO



Chief Magistrate Judge

United States District Court
Northern District of California

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